

Mr. SPEAKER.—The Bill will be read Clause by Clause. The question is:

“That Clause 2 stand part of the Bill.”

The motion was adopted.

Clause 2 was added to the Bill.

Mr. SPEAKER.—The question is:

“That Clause 1, the Preamble and the Short Title stand part of the Bill.”

The motion was adopted.

Clause 1, the Preamble and the Short Title were added to the Bill.

Motion to pass.

Sri H. M. CHANNABASAPPA.—I beg to move:

“That the Mysore Motor Vehicles (Taxation on Passengers and Goods) (Amendment) Bill, 1961, be passed.”

Mr. SPEAKER.—The question is:

“That the Mysore Motor Vehicles (Taxation on Passengers and Goods) (Amendment) Bill, 1961, be passed.”

The motion was adopted.

THE MYSORE SALES TAX (FOURTH AMENDMENT) BILL, 1961.

Motion to Consider.

Sri J. H. SHAMSUDDIN (Deputy Minister for Finance).—I beg to move:

“That the Mysore Sales Tax (Fourth Amendment) Bill, 1961, be taken into consideration.”

Mr. SPEAKER.—Motion moved:

“That the Mysore Sales Tax (Fourth Amendment) Bill, 1961, be taken into consideration.”

[Mr. DEPUTY SPEAKER in the Chair]

†Sri J. H. SHAMSUDDIN.—Sir, these amendments have been necessitated on account of the experience gained while enforcing the original Act. By some amendments, the assessees will get relief and some amendments are meant to simplify the procedure for giving relief to the assessees and incidental procedure connected therewith. In fact, it does not involve any principle. The amendments themselves when explained will be clear and they will show that they are essential and non-controversial. Amendment to Section 3 contemplates that the inspecting Officers will be designated and termed as Assistant Commissioners with a right to hear appeals. Now, in order to have quick disposals of appeals in the different districts or in the different divisions, it is better that some of the appeals pending with the Deputy

Commissioners may be transferred to the inspecting officers and they may be enabled to dispose of these appeals which are pending. Such an amendment will increase the pace of disposals so far as appeals are concerned. Therefore amendment of Section 3 is sought for. The amendment to Section 5 is based on the Madras model of the Sales Tax Act. Now, if we read the original section to which the amendment is proposed, it will be clear that sometimes the refund of tax may not go to the person who really deserves it or who is entitled according to law because of the words used in the proviso. The proviso says :

“Provided that where tax has been paid in respect of the sale or purchase of any of the declared goods under this sub-section and such goods are subsequently sold in the course of inter-State trade or commerce, the tax paid under this Act shall be refunded to the dealer or production of proof that the subsequent sale has been subjected to the tax under the Central Sales Tax Act, 1956.”

A dealer might have paid local tax and subsequently the article might be subject to inter-State transaction and the second man who has effected inter-State transaction may have paid both local tax and the Central tax, but he will not be entitled to refund of the tax because he has to prove that the article is subject to central tax. The word ‘subjected’ has led to certain confusion and certain amount of complications. So, we have sought to omit those words and simply said ‘shall be refunded to such person in such manner and subject to such condition as may be prescribed.’

Sri M. R. PATIL.—May I know whether such contingency arises in case of cotton where the last dealer is liable to pay state tax; if anybody were to transport cotton under inter-State Transaction, it will be such person only. How does the contingency arise if local tax is paid by one person and refund is payable to another person ?

Sri J. H. SHAMSUDDIN.—I will give the instance of cotton yarn. For example, the manufacturing Mill becomes what is called the first seller and it pays the local tax. It sells it to managing Agents who effect the Inter-State sale. Now the Mill will recover from the agent the local tax that has been paid and the Managing Agent who effects inter-State sale will also pay the Central tax. The refund must really go to the man who has effected the Inter-State sale, that is the Managing Agents and not the Mill. But under the provisions of this section, if the Mill prove that these goods have been subject to Central tax, it will get the refund. If A, B or C has paid the central tax, he has to prove that the Central tax has been paid somebody. This confusion has arisen. We want to amend the Act on the lines of Madras Act. It is better if I read the Madras Section. Section 4 of the Madras Act says:

“Provided that where tax has been levied under this section in respect of the sale or purchase of any of the declared goods and such goods are resold in the course of inter-State trade or

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commerce, the tax so levied shall be refunded to such person in such manner and subject to such condition as may be prescribed."

We want to replace that portion of the section in *toto* and incorporate those very words.

The principal idea behind this amendment is that a person who has really paid the local tax should be entitled to the refund and not any other person. When framing the rules, we will have before our mind the Madras Rules, and we shall frame them having regard to the local conditions prevailing here.

Then, there is another amendment which is in connection with item Nos. 5 and 6 of the Fourth Schedule. In the course of transaction, suppose A purchases certain quantity of cotton, stores it in his godown and does not sell it and suppose the assessing authority takes one financial year or accounting year, whichever may be chosen by the assessee, as the period for which assessment is completed, naturally he will be assessed because he is the first purchaser. Suppose subsequently he sells it after the assessment is over, naturally the tax that is to be paid is by the subsequent dealer. Difficulties have arisen on account of the sales tax being paid after the assessment is completed. In order to obviate these difficulties that have arisen we have proposed this amendment.

Then there is an amendment to section 18. Sometimes the registered dealers recover tax from the consumer or from other persons. There is no provision that the persons who have paid the tax to the registered dealer which was not leviable and which ought to be refunded cannot claim refund. Therefore, we want to enable the Government to give refund actually to the man who has paid the tax to the registered dealer so that the amount collected from the consumers or from the persons who have made the purchase may be returned to the real person.

Then, amendment of Section 20 is a consequential amendment.

Then, the next amendment is to delete the words 'to him' in Section 21. The words 'to him' refer only to the Deputy Commissioner. Now, by this amendment, we are enabling the Assistant Commissioner to hear the appeal. The words 'to him' may lead to confusion. They have become redundant and we want to delete them.

Amendment of Section 22 is also consequential.

Coming to the amendment of Second Schedule, a question has arisen whether indigenous beer is liable to tax. The High Court has held that it is not liable for taxation. It is not the intention of this House that foreign beer alone should be liable for taxation. All sorts of beer, whether it is manufactured in India or outside, should be made liable for taxation. In order to remove the doubt and the situation created by

the decision of the High Court, we have proposed this amendment. Similarly, the amendment proposed to the Explanation II in the Second Schedule is meant for that purpose only.

The High Court has also held that all the tax recovered or recoverable from the indigenous manufacturers of beer cannot be recovered and should be refunded. Therefore we want to validate the actions taken under this section.

These are the principal features of the amendment and I hope the House will accept them.

†Sri G. VENKATAI GOWDA.—Sir, it is said that the High Court recently gave a decision that the indigenous beer is not liable to be taxed at 25 per cent. I wish to bring to the notice of Government that it ought to have made a difference between indigenous beer and foreign beer.

It is said by the Deputy Minister that the High Court has directed that the tax collected should be refunded.

Sri J. H. SHAMSUDDIN.—I have not said that. I said that the High Court has ruled that the tax collected is *ultra vires*.

Sri G. VENKATAI GOWDA.—The High Court has said that the tax collected is not legal and ought to have been refunded. My submission is that the tax is collected from the dealers. Those dealers should have collected from the consumers. Several consumers who have taken beer would have paid this tax at 25 per cent. So the dealer of that particular deal might have collected the tax and remitted it to the Government. It cannot be refunded.

Sri J. H. SHAMSUDDIN.—We are not refunding. We are taking power to validate the action we have taken.

Sri G. VENKATAI GOWDA.—My submission is, there is no reason for the Government to presume that because the High Court has held that levy at 25 per cent is illegal, there is no room for the Government to presume that the tax already collected should be refunded and therefore we have to validate the action taken. There is no necessity for validating the collection of taxes. Even if it is taken for granted that anybody claims refund, Can he legally claim it? It has been collected from consumers and nobody can have any voice. So I feel there is no need for bringing an amendment to validate the collection of taxes that has already been collected, and the person to whom it has be refunded cannot be identified.

So far as amendment to section 3 is concerned, it is sought to designate Inspecting Officers as Assistant Commissioners of Commercial Taxes and empower them to hear appeals against the orders of Assistant Commercial Tax officers. So far as the working of this Act is concerned, in Madras they have the Deputy Commissioner of Commercial Taxes and Assistant Commissioners of Commercial Taxes.

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They do not have these Assistant Commercial Tax Officers. I feel that we should empower the Commercial Tax Officers themselves to hear the appeals from the orders of the Assistant Commercial Tax Officers. There is no need to create another cadre of Assistant Commercial Tax Officers. I do not see what other work is sought to be given in addition to hearing of appeals. When there are Deputy Commissioner for Commercial taxes, Assistant Commissioner of Commercial Tax Officers and Commercial Tax Officers and Inspecting Officers why should there be another category of Officer? Would it not burden the State exchequer? So far as hearing of appeals is concerned, the Commercial Tax Officers and Assistant Commercial Tax Officers are concerned. So, what other work can be done by these Assistant Commissioner of Commercial Tax Officers. This cadre of Inspecting Officers or Assistant Commercial Tax Officers is not necessary and with the existing staff the provision of this Act can be implemented. Let the Hon'ble Minister convince this House about the exact work turned out by the existing officers, and what are the other type of works that are going to be given to the officers.

Amendment of Section 18 seeks to power to forfeit any amount collected by the dealers. In these cases the dealers have already collected and the Government should not take the view that they have collected the amount in contravention of the provisions of the Act. Under the existing Act they have collected and so the Government should not take the view that it is in contravention of the Act.

With these observations I close my speech.

† Sir C. K. RAJAI AH SHETTY.—Sri this Sales Tax Department is one of the most resourceful departments of the State and it is bringing the highest revenue to the State. It is unfortunate that there is some kind of a cry in this House that the Inspecting Officer should not be an appellate authority. The intention of the Inspecting Officer is to collect more revenue from each Division or Circle in which he is expected to collect.

Sri J. H. SHAMSUDDIN.—At present the Deputy Commissioner of Commercial Taxes is hearing appeals.

Sri C. K. RAJAI AH SHETTY.—The Deputy Commissioner is the Inspecting authority as well as the appellate authority. I say that it should not be so. Every Deputy Commissioner wants more revenue from his district and so he will always uphold his subordinate Officers.

Sri J. H. SHAMSUDDIN.—We will empower the Commercial Tax Officers.

Sri C. K. RAJAI AH SHETTY.—The Commercial Tax Officer is the head of the district and he is head of the department also. He should not made to hold both the places. There should be a separate appellate authority to take up the cases. As it is the Inspecting Officer is

expected to here the appeals and there cannot be any justice either for the merchants or for the people.

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When the work has so voluminously increased, number of cases are also increasing and when the number of cases are increasing, there is enough workload both for Assistant Commercial Tax Officers as well as for Deputy Commissioners. It is therefore necessary that there should be a separate cadre of people as appellate authority. It is only then there will be fairness. So, amendment to this section requires reconsideration. These appellate authorities should not have a right to here appellate cases. There should be separate appellate officers to hear all these appeals. The merchants are now suffering; if the appellate authorities are inspecting authorities, then they would uphold the judgment of lower officers because they want more collections. I oppose this Bill and suggest that a separate section of officers should be created to hear appellate cases and inspecting authorities should never be appellate authorities.

† Sri J. H. SHAMSUDDIN.—Sir, two conflicting views have been offered with regard to the enabling section of appellate powers being given to the Assistant Commissioners. The Hon'ble Member Sri Venkatai Gowda said that Commercial Tax Officers may be empowered to hear appeals from Assistant Commissioners. The amendment seeks to give power to higher officers, inspecting officers or above C.T.Os. The difference in the official hierarchy between C.T.O. and A.C.T.O. may not be very great. The mode of recruitment consists of two ways. Some times A.C.T.Os. are promoted and C.T.Os. are some times directly recruited. Supposing directly recruited C.T.O. is there and is made to hear appeals from an A.C.T.O. who has experience of 5 to 6 years work. Then the work expected to be turned by the C.T.O. in exercise of his appellate jurisdiction against the assessment order of A.C.T.O. will not be upto the expected mark. Therefore, we have thought fit that an officer who has sufficient experience of the Department of the type of inspecting officers should be empowered for hearing appeals. Sri Venkatai Gowda was wrong in his assumption and inference that we want to create a cadre of officers for hearing these appeals. There are already inspecting officers who are assigned divisions in order to check evasion and to supervise the work of assessment and to look to the prompt and efficient discharge of duties of A.C.T.O., C.T.O. as well as establishment under them. We want these additional duties and functions to be undertaken by them. Therefore, there will be no extra cost to Government and no separate establishment will be created for this purpose. We have chosen officers of Sufficient experience and of highest grade in the hierarchy of officers to hear appeals against C.T.Os. We cannot entrust C.T.Os. who are also assessing authorities with hearing of appeals. Sri Rajaiah Shetty said that separate cadre for hearing appeals should be created in order to get justice to the assesses because appellate authorities especially inspecting officers belong to the

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same Department and their view and their exercise of judicial function may be coloured by their anxiety to get more money to Government. After all, they are exercising judicial or *quasi*-judicial functions. If there is sufficient ground for appeal to higher authority against the Inspecting Officer, you can go to the Deputy Commissioner and from the Deputy Commissioner you can appeal against either to the Commissioner or the Tribunal.

Sri C. K. RAJAIAR SHETTY.—After all, orders of A.C.T.O. are limited to certain turnover. You say there are so many Appellate Authorities. After all, the cost of appeal, time factor and other things will come to much more than the tax he has to pay. Suppose an order is passed for Rs. 200. If a person feels it is much, is it possible for him to go up to Tribunal and get redress?

Sri J. H. SHAMSUDDIN.—Normally, now, he had to go to Deputy Commissioner. We are substituting another officer of a lower grade so that it comes convenient for him to hear appeals. Inspecting officers and it will be convenient for the assessee because during the tour, the inspecting officer may fix appeal and decide it then and there. Therefore, Sir, I do not think that the interest of the assessee will be jeopardised or prejudiced if we invest the inspecting officers with appellate powers. After all, the assessment that is being made by the ACTO is to the tune of Rs. 40,000 turnover only. These are small cases and therefore I feel justice will be done by the Inspecting officers concerned. Now a doubt was cast why should we validate the action taken under the provisions of the Act which has been invalidated by the High Court. There would be no claim of refund because those persons who had paid tax must have recovered from the consumer and therefore the identity of the person claiming refund is not traceable. That is not so. Of course, there is nothing wrong if Government is fore-armed. Supposing they may be making claims; therefore, it is better in the interest of Government revenue that we take precautions to validate actions. We cannot deny claim of refund on the ground that the tax has been passed on to the consumer. After all, the scheme of sales tax is paid by consumer and the Act contemplates refund to those who have paid the tax and not directly to Government and not indirectly through the consumer. After all supposing now we made an amendment and say that the tax should be paid to those who have paid the Central Tax. Even the Central Tax is shifted on to consumer. In reality and in the implementation of the Act, it is the consumer that pays the tax. But we cannot go on making enquiry as to the ultimate man who has paid the tax. The Government should confine itself to the person who has directly paid the tax, that is the manufacturer of indigenous power. They have paid the tax to the Government and they are entitled. We cannot go on finding out how that power was consumed it, and who are liable for refund. Such enquiry is not contemplated under the provisions

of the Act. Therefore, in order to avoid the possibility of claim of refund by those from whom we have recovered tax under the *bona fide* belief that Government have power to recover which has been invalidated, we have taken precaution to validate it. These are the criticisms made against some of the provisions of the Bill. I again commend the Bill for the acceptance of the House.

Mr. DEPUTY SPEAKER.—The question is:

“That the Mysore Sales Tax (Fourth Amendment) Bill, 1961, be taken into consideration.”

The motion was adopted.

Mr. DEPUTY SPEAKER.—The Bill will be read Clause by Clause. The question is:

“That Clauses 2 to 10, both inclusive stand part of the Bill.”

The motion was adopted.

Clauses 2 to 10, both inclusive were added to the Bill.

Mr. DEPUTY SPEAKER.—The question is:

“That Clause 1, the Preamble and the Short Title stand part of the Bill.”

The motion was adopted.

Clause 1, the Preamble and the Short Title were added to the Bill.

Motion to pass.

Sri J. H. SHAMSUDDIN.—I beg to move:

“That the Mysore Sales Tax (Fourth Amendment) Bill, 1961, be passed.”

Mr. DEPUTY SPEAKER.—The question is:

“That the Mysore Sales Tax (Fourth Amendment) Bill, 1961, be passed.”

The motion was adopted.

THE MADRAS AREA MUNICIPALITIES (EXTENSION OF TERM OF COUNCILLORS) (AMENDMENT) BILL, 1961.

Motion to Consider.

†Sri T. SUBRAMANYA.—(Minister for Development and Local Self-Government). Sir, I beg to move:

“That the Madras Area Municipalities (Extension of term of Councillors) (Amendment) Bill, 1961, be taken into consideration.”